

HEPBURN T. ARMSTRONG

IBLA 82-786

Decided April 29, 1983

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease application NM 42787.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Known Geologic Structure--Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only after competitive bidding under the provisions of 43 CFR 3120. A noncompetitive oil and gas lease offer is properly rejected where during the pendency thereof the land is determined to be within the known geologic structure of a producing oil or gas field. The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes the priority to be accorded conflicting applications.

2. Oil and Gas Leases: Known Geologic Structure

A known geologic structure is technically the trap, whether structural or stratigraphic, in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive.

APPEARANCES: Hepburn T. Armstrong, pro se; John H. Harrington, Esq., Office of the Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

By decision of November 24, 1981, this Board set aside a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 2, 1981, and remanded the case file to the State Office to allow Geological Survey (Survey) to comment on a geological report submitted by appellant. Hepburn T. Armstrong, 60 IBLA 140 (1981). BLM's decision of July 2, 1981, rejected appellant's oil and gas lease application NM 42787 for a 40-acre parcel in SW 1/4 NE 1/4 sec. 26, T. 19 S., R. 24 E., New Mexico principal meridian. The basis for BLM's decision was its finding that the aforementioned lands are within an undefined, unnamed known geologic structure (KGS).

Appellant's application NM 42787 was first drawn in the October 1980 drawing of simultaneously filed oil and gas lease applications. On the basis of the completion on November 10, 1980, of the No. 1-Oakason "NV" Federal well in the Morrow formation in sec. 27, T. 19 S., R. 24 E., New Mexico principal meridian, Survey initiated a geologic study of existing KGS lands and production from other wells in the area. Upon completion of this study, the boundaries of an undefined addition to existing undefined KGS's were established to include the lands now sought by appellant in sec. 26. On June 26, 1981, Survey received a request from BLM to report whether the lands in offer NM 42787 were on a KGS. By memorandum of June 29, 1981, Survey notified BLM that the 40-acre tract at issue was so located, effective November 10, 1980, and could not be leased to appellant on a noncompetitive basis. The remainder of the lands in NM 42787 were found to be outside a KGS and have been leased to appellant, effective August 1, 1981.

The comments requested by this Board of Survey to appellant's geological report support the report's characterization of the Morrow formation as "a series of stratigraphic traps composed of sands, shale and shaley sands." Production is from the clean sand portions and is more or less independent of structure (Survey comments, February 25, 1982, at 1). The comments also state that 13 of 19 completed wells in the area are producing from the Pennsylvanian Morrow formation. Four of the wells completed in other formations tested gas from Morrow intervals, showing the Morrow reservoir to be present. Survey found that its log studies and correlation of well data show that Morrow reservoir rocks are present throughout the area. These studies caused Survey to describe the Morrow formation as consisting of multiple overlapping producing intervals. *Id.* at 3.

The concluding paragraph of Survey's comments states:

In summary, a Known Geologic Structure includes the trap whether structural or stratigraphic, regardless of fluid content or rate of production from the reservoir and is not restricted to one single reservoir. It contains all acreage, based on available data and geologic inference, which can be presumed to be productive. The KGS action affecting the subject 40 acres is based on geologic studies of producing Morrow wells in the area, initiated by completion of Yates Petroleum Corp's No. 1 Oakason "NV" Federal. We do not contend that the Morrow formation reservoir is one continuous reservoir throughout the entire Known Geologic Structure, rather, our study indicates there are multiple,

overlapping Morrow producing intervals, thus demanding an addition to existing Known Geologic Structures. It is our contention that the entire Known Geologic Structure is presumptively productive, and nothing in Mr. Armstrong's appeal or the geologic report of C. E. Dorsey proves otherwise.

Shortly after receipt of Survey's comments, BLM, on March 26, 1982, again rejected offer NM 42787 as to the 40-acre parcel in sec. 26.

[1] Land within a KGS of a producing oil or gas field may be leased only after competitive bidding pursuant to 43 CFR 3120. 30 U.S.C. § 226(b) (1976). Thus, if lands embraced in a noncompetitive offer are designated as being within a KGS before issuance of a lease, the noncompetitive lease offer must be rejected as to those lands. Lida R. Drumheller, 63 IBLA 290 (1982); Richard J. DiMarco, 53 IBLA 130 (1981), aff'd DiMarco v. Watt, Civ. No. 81-2243 (D.D.C. Mar. 25, 1982); Guy W. Franson, 30 IBLA 123 (1977); 43 CFR 3110.1-8. This Department has no discretion under the law to issue a noncompetitive lease for such lands. McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

The drawing of an application for a noncompetitive oil and gas lease creates no vested rights in the applicant; it only establishes priority of filing. 43 CFR 3110.1-6(b). See Guy W. Franson, supra. Under 43 CFR 3112.4-1(a), a priority applicant's timely submission of the properly signed lease and required rental constitutes an offer to lease. The signing of this offer by the authorized BLM officer is the act that constitutes acceptance of the applicant's offer and creates a binding contract. 43 CFR 3112.4-2. The date of signing is the date of lease issuance and the determinative date with respect to the rights of the offeror. Moreover, it is not improper for BLM to rely upon a well completion occurring after the drawing to support rejection of appellant's offer. P. M. Braun, 60 IBLA 246 (1981). 1/

[2] Regulation 43 CFR 3100.0-5(a) defines a KGS in this manner. "A known geologic structure is technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." Survey's finding that such a trap may be structural or stratigraphic is consistent with prior Department policy. Karl Bruesselbach, A-28061 (Oct. 26, 1959). See also Angelina Holly Corp., 70 IBLA 294 (1983), and Robert L. Lyon, 66 IBLA 141 (1982), for applications of this policy. An applicant for an oil and gas lease who challenges a determination by Survey that lands are situated within the KGS of a producing oil and gas field has the burden of showing that the determination is in error. Robert L. Lyon, supra.

In his statement of reasons filed April 28, 1982, appellant objects to BLM's retroactive designation of the lands as KGS effective November 10, 1980.

1/ Instruction Memorandum No. 83-392 (Mar. 17, 1983) instructs BLM to use as the effective date of a KGS designation that date upon which all necessary information, mechanical logs, electric logs, well histories, well completions, etc. have been correlated and a determination made.

Had the New Mexico State Office issued lease NM 42787 in a reasonably expeditious manner following the October 1980 drawing, appellant argues, his lease would have included the 40-acre parcel at issue.

Appellant's argument has been addressed previously in Lida Drumheller, supra. It is BLM's longstanding practice to inquire of Survey prior to lease issuance whether lands included in a successful oil and gas lease application are within a KGS. If appellant is maintaining that inefficiency in the State Office precluded issuance of a lease containing the subject 40 acres prior to November 10, 1980, he greatly overestimates the speed of lease issuance. Moreover, as noted in P. M. Braun, supra, BLM may properly consider data not in existence at the time of the drawing to support rejection of an oil and gas lease offer.

The fact that oil companies active in the area have expressed no interest in the lands at issue does not undermine Survey's KGS designation. Numerous considerations influence such decisions. Furthermore, the fact that Conoco, a lessee in the area, allowed a farm-out agreement with appellant to expire does not demonstrate error in Survey's action. Appellant's statement that Conoco drilled three dry holes in the Morrow formation of the Dagger Draw field after the KGS designation was made lacks sufficient detail to establish that the subject 40-acre parcel is not located within a KGS. See, e.g., James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (1982). A similar failure to provide detail is present in the statement of a consultant retained by appellant. This statement, consisting of a single sentence, states that the subject 40 acres does not in the consultant's opinion meet the definition of a KGS in Circular 2357.

Appellant presents a number of additional arguments, each of which has been considered by the Board. A supplemental statement of reasons received on May 21, 1982, has also been considered. Nowhere in these arguments does appellant establish error in the KGS designation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of March 26, 1982, is affirmed.

Anne Poindexter Lewis

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Bruce R. Harris
Administrative Judge.

